



IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1976

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No. **75-1115**

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JOSEPH DE PAOLA, WILLIAM A. JACKSON,  
JOSEPH A. PLACEK and FRANCIS M. WRIGHT  
Petitioners

versus

UNITED STATES OF AMERICA

Respondent

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PETITIONERS' APPENDIX TO PETITION  
FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE  
FOURTH CIRCUIT

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Attorneys for Petitioners

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 74-1954

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UNITED STATES OF AMERICA                      Appellee,

vs.

William A. Jackson, Jr.  
Joseph A. Placek  
Francis M. Wright,                                      Appellants.

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No. 74-1955

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UNITED STATES OF AMERICA                      Appellee,

vs.

Timothy O. Watts,                                      Appellant.

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No. 74-1956

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UNITED STATES OF AMERICA,                      Appellee,

vs.

Joseph C. DePaola,                                      Appellant.

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Appeals from the United States District Court  
for the District of Maryland, at Baltimore.  
Herbert F. Murray, District Judge.

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(Argued November 14, 1975. Decided - Jan. 8, 1976)

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Before Haynsworth, Chief Judge, and Butzner and  
Widener, Circuit Judges.

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Harold I. Glaser for William A. Jackson, Jr.,  
Joseph A. Placek, Francis M. Wright, and Joseph  
C. DePaola; Howard Heneson (court-appointed  
counsel) (Harold I. Glaser and Richard M. Karceski  
on brief) for Timothy O. Watts; Gerald P. Martin,  
Assistant United States Attorney, (Jervis S. Finney,  
United States Attorney for the District of Maryland,  
and James E. Anderson, Assistant United States  
Attorney, on brief) for appellee.

#### PER CURIAM:

Several members of the Baltimore Police Department appeal their convictions for conspiring to obstruct the criminal laws of Maryland with intent to facilitate an illegal gambling business, in violation of 18 U.S.C. § 1511. They contend that the government charged them with participation in a single conspiracy and then proved multiple conspiracies to their prejudice, that they were denied Jencks Act information, that the district court's refusal to read portions of the transcript to the jury erroneously highlighted the government's case, and that the court improperly denied a severance. We affirm.

The indictment alleged that the appellants and other members of the police department received money from gamblers in return for not enforcing state gambling laws. Appellants claim that the evidence showed the existence of several distinct gambling operations with separate protection arrangements, and not the single conspiracy charged in the indictment.

The evidence does not support the appellants' contention. Although the identity of the conspirators changed over time, all were involved in related gambling activities. Moreover, a single "bag man" distributed the bribes to the other police officers. We conclude, therefore, that rather than showing several distinct conspiracies, as in *Kotteakos vs. United States*, 328 U.S. 750 (1946), the government established the existence of one scheme. That there

may have been several branches of the conspiracy does not alter its unitary character. See *Blumenthal v. United States*, 332 U.S. 539 (1947).<sup>1</sup> Since the evidence showed only one conspiracy, the district judge properly refused to instruct the jury on the law of multiple conspiracies. See *United States v. Nickels*, 502 F. 2d 1173, 1178 (7th Cir. 1974).

Although the government produced Jencks Act material for the defense, it inadvertently did not include the grand jury testimony of two witnesses. Appellants contend that this violated the Act, 18 U.S.C. § 3500. Applying the strict standard established in *United States v. Missler*, 414 F. 2d 1293, 1303-04 (4th Cir. 1969), we find that any lack of disclosure was harmless. Information substantially the same as that contained in the grand jury testimony was furnished the appellants from other sources, and the effective cross-examination of the two witnesses demonstrated that the absence of the grand jury testimony did not prejudice them.

Similarly, the government's failure to provide the defense with a police captain's grand jury testimony did not violate the principles established in *Brady v. Maryland*, 373 U.S. 83 (1963). The

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1. Similar contentions were raised in a related, unpublished, case, where we also concluded that the evidence did not show multiple conspiracies. *United States v. Goodrich*, No. 74-2399 (4th Cir., Sept. 23, 1975).

captain testified before the grand jury that there were undercover agents investigating these gambling operations, but he never identified the agents. He did not testify at the trial. There is no indication that his grand jury testimony would exculpate these defendants, and the government was not obliged to produce it.

The jury made several requests during its deliberations for a tape and certain testimony. The court granted these requests, but the appellants objected unless the witnesses' cross-examination was furnished as well. With one exception, the district court refused to repeat the cross-examination to the jury.

We find no reversible error in these rulings. It is ordinarily not an abuse of discretion for the court to limit the repetition of evidence to the jury's request. ABA, Standards Relating to Trial by Jury § 5.2 (App. Draft 1968). In this case, we cannot say that the court abused its discretion in refusing the appellants' requests. The cross-examination was lengthy and often reiterated answers adduced the jury to consider the repeated material in the context of the witnesses' entire testimony.

Finally, appellant Watts claims that the trial court's denial of his motion to sever his trial under Fed. R. Crim. P. 14 denied him a fair trial. He contends that very little of the government's evidence related to him and that the jury was unable to properly separate it from the voluminous evidence about his co-defendants. He also argues that his co-defendants' defenses were antagonistic

to his. The government presented ample evidence to prove Watts' participation in the conspiracy. That he did not participate to the extent of his co-defendants does not automatically justify a severance. See United States v. Somers, 496 F. 2d 723, 730 (3d Cir. 1974). A separate trial would have required the government to repeat much of the evidence presented at this four week trial. The trial court did not abuse its discretion in refusing to sever Watts' trial. United States v. Frazier, 394 F. 2d 258 (4th Cir. 1968).

The judgment of the district court is affirmed.